11-14-2013

State v. Wulff Appellant's Brief Dckt. 41179

IN THE SUPREME COURT OF THE STATE OF IDAHO

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STATE OF IDAHO, Plaintiff-Appellant, vs. MICAH ABRAHAM WULFF, Defendant-Respondent.	)	No. 41179 Kootenai Co. Case No. CR-2012-19332

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence obtained as the result of a blood draw.

Statement Of The Facts And Course Of The Proceedings

A sheriff's deputy observed a car driven at speeds in excess of 60 miles per hour in a marked 25 mile per hour zone. (R., p. 7.) The car stopped in response to the deputy's lights, and the deputy made contact with the car's driver, Micah Wulff. (Id.) Wulff admitted he "shouldn't be driving" and his car smelled strongly of an alcoholic beverage. (Id.) Wulff admitted drinking, and failed field sobriety tests. (Id.) Wulff stated he would not participate in a breath test so the deputy transported him to a hospital. (Id.) Wulff initially resisted giving a blood sample, but "ultimately allowed the nurse to perform a blood draw." (R., pp. 7-8.)

The state charged Wulff with felony DUI. (R., pp. 44-45.) Wulff moved to suppress the results of the blood draw.[1] (R., pp. 52-56.) The district court granted the motion, concluding that implied consent is no longer a valid exception to the warrant requirement. (R., pp. 95-108.) The state filed a timely notice of appeal. (R., pp. 111-13.)

[1] The result of the test was a .217 BAC. (R., p. 105, n.3.)

ISSUES

Did the district court err when it concluded that implied consent is not a valid exception to the warrant requirement?

ARGUMENT

The District Court Erred When It Concluded That The Implied Consent Exception Does Not Apply In This Case Because The Exigency Exception Does Not Apply In This Case

A. Introduction

The district court concluded that Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552 (2013), "places new limits on the ability of law enforcement to conduct a blood test without a warrant." (R., p. 100.) The district court then held that implied consent does not justify a warrantless blood draw. (R., pp. 100-04.) The district court's determination that McNeely eliminated the implied consent exception is erroneous, and therefore the district court's suppression order should be reversed.

B. Standard Of Review

The standard of review of a district court order granting or denying a suppression motion is bifurcated: factual findings are accepted unless clearly erroneous, but the Court freely reviews the application of constitutional principles to the facts found. State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009).

C. The District Court Erred By Concluding That Consent To BAC Testing By Blood Draw May Not Be Implied By Law

The Fourth Amendment prohibits unreasonable searches and seizures. "A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement." State v. Kerley, 134 Idaho 870, 873, 11 P.3d 489, 492 (Ct. App. 2000) (citing Coolidge v.

New Hampshire, 403 U.S. 443, 454-55 (1971); see also State v. Ferreira, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999).) Consent is such an exception to the warrant requirement, and may be implied under Idaho's implied consent statute. State v. Diaz, 144 Idaho 300, 302-03, 160 P.3d 739, 741-42 (2007).

In its analysis the district court concluded that the McNeely decision by the Supreme Court of the United States requires a warrant unless exigent circumstances or actual consent justify the warrantless search. (R., pp. 100-01.) The district court thus effectively held that a blood draw may not be justified by implied consent. By holding that implied consent is not a valid exception to the warrant requirement, the district court erred.

This Court has clearly stated that consent and exigent circumstances are *different exceptions* to the warrant requirement. Diaz, 144 Idaho at 302, 160 P.3d at 741 ("Exigency, however, is not the lone applicable exception here; consent is also a well-recognized exception to the warrant requirement."). The Supreme Court of the United States recognized this as well in McNeely. In that case the only question before the Court was "whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." McNeely, 133 S.Ct. at 1556. The Court held that "exigency in this context must be determined case by case based on the totality of the circumstances." Id. Thus, the issue was limited to "*nonconsensual* blood testing" (emphasis added) and the holding was limited to

the exigent circumstances exception. Moreover, in addressing whether a case-by-case analysis under the exigency exception would "undermine the governmental interest in preventing and prosecuting drunk-driving offenses," the Court specifically stated that states would still "have a broad range of legal tools to enforce their drunk-driving laws and to secure BAC evidence without undertaking warrantless nonconsensual blood draws," including "implied consent laws." Id. at 1565-66. Far from holding that the state may not legally imply consent by a motorist, the Court apparently endorsed implied consent laws.[2]

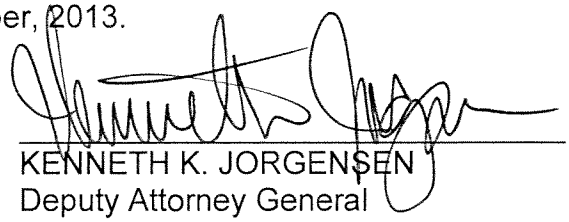
Consent is a valid exception to the warrant requirement, and such exception may be implied by law. Diaz, 144 Idaho at 302-03, 160 P.3d at 741-42. This exception applies regardless of the applicability of the exigency exception. Id.; see also State v. DeWitt, 145 Idaho 709, 712-13, 184 P.3d 215, 218-19 (Ct. App. 2008) ("Even if the exigent circumstances exception was inapplicable, the blood draw was valid pursuant to DeWitt's implied consent."). The district court's conclusion that implied consent is not a valid exception to the warrant requirement, and therefore the state must show exigency or actual consent, was erroneous.

[2] The district court also concluded that the state's argument that "the warrantless blood draw was proper under Idaho's Implied Consent Statute" was "contradictory to a reasonable interpretation of the implied consent statute, I.C. § 18-8002." (R., pp. 102-03.) Idaho appellate courts "have long held that a driver has no legal right to resist or refuse evidentiary testing." State v. LeClercq, 149 Idaho 905, 909, 243 P.3d 1093, 1097 (Ct. App. 2010) (citing cases back to 1989). The district court lacked authority to overrule the interpretation of the implied consent statute by Idaho appellate courts and was not at liberty to ignore that binding precedent.

CONCLUSION

The state requests that the district court's order suppressing the evidence obtained by the blood draw be reversed and the matter remanded for further proceedings.

DATED this 14th day of November, 2013.



KENNETH K. JORGENSEN
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of November, 2013, I caused two true and correct copies of the foregoing BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

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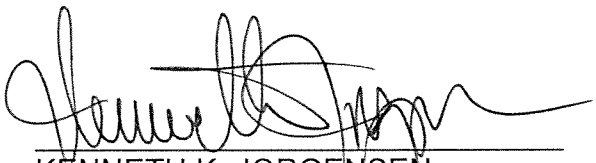

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